

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the matter of	)
	)
TELECOM NEW ZEALAND USA, LTD.	)
	)
Application Pursuant to Section 214 for	)
Authority to Provide Global Resale and Facilities-	)
Based International Services	)
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**APPLICATION FOR INTERNATIONAL  
SECTION 214 AUTHORITY**

Telecom New Zealand USA, Ltd. (“TNZ USA”) hereby requests authority, pursuant to Section 214 of the Communications Act, as amended (“the Act”), and Sections 63.18(e)(1), 63.18(e)(2) and 63.18(e)(4) of the Commission’s rules, to provide global facilities-based and resold services between all domestic and international points not on the FCC’s exclusion list. TNZ USA also requests authority, pursuant to the Commission’s rules, to provide switched services through private lines interconnected to the public switched telephone network (“international simple resale” or “ISR”). TNZ USA requests permission to operate as a non-dominant international carrier on all international routes, with the exception of the U.S.-New Zealand and U.S.-Cook Islands routes. With regard to those two routes, TNZ USA agrees to operate under dominant-carrier regulation as defined in Section 63.10(c) of the Commission’s rules.<sup>1</sup>

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<sup>1</sup> See 47 C.F.R. §63.10(c).

TNZ USA hereby requests streamlined review of its application for a Section 214 authorization.

## **I. BACKGROUND**

TNZ USA is an international telecommunications carrier based in Pasadena, California, and operating under the laws of the state of Delaware. It is a wholly owned subsidiary of Telecom Corporation of New Zealand Limited (“TCNZ”), an international telecommunications carrier and holding company based in Wellington, New Zealand. Pursuant to Section 214 of the Act, TNZ USA operates currently under four separate authorizations, which can be summarized as follows:

- Authorization to acquire and operate facilities for the provision of switched, private line, and other authorized services between the United States and New Zealand (File No. ITC-96-097), granted December 17, 1996;
- Limited Global Facilities-based/Limited Global Resale Services authorization to operate as a facilities-based carrier and to resell international services between the United States and all eligible international points except New Zealand (File No. ITC-97-186), granted May 9, 1997;
- Authorization to resell international private lines interconnected to the public switched network for the provision of telecommunications services between the United States and New Zealand (File No. ITC-97-049), granted September 30, 1997; and

- Authorization for authority to operate as a facilities-based carrier and to resell services between permissible international points and the former Ameritech states and New York (File No. ITC-214-20001117-00675), granted December 15, 2000.

The first three of these authorizations originally were granted to Telecom New Zealand Ltd. (“TNZL”), TNZ USA’s predecessor in the U.S. market and a subsidiary of TCNZ. TNZL held the Section 214 authorizations until they were transferred to TNZ USA on April 15, 1998.<sup>2</sup> As a condition of all of these authorizations, TNZ USA was prohibited from providing originating international, interLATA services in those states in which Verizon Corp. operating companies (the “Verizon BOCs”) had not, at that time, won permission to offer originating interLATA services. This condition stemmed from Verizon’s ownership of an indirect interest in TNZ USA exceeding 10 percent. Under the terms of the Act and the FCC’s rules, Verizon’s ownership of more than 10 percent of TNZ USA constituted an affiliation between TNZ USA and the Verizon BOCs. Thus, TNZ USA was governed by the interLATA service restrictions of Section 271 of the Act.

## **II. VERIZON’S DIVESTMENT OF TCNZ SHARES**

Between January 14, 2002 and April 24, 2002, Bell Atlantic Holdings Limited (BAHL), a Verizon subsidiary, sold 11,405,000 shares in Telecom Corp. of New Zealand (TCNZ), which owns 100 percent of TNZ USA. On September 26, 2002, BAHL sold 370,000,000 shares in TCNZ. As a result of these transactions, Verizon now indirectly holds only 1 percent of TNZ USA’s outstanding shares, placing TNZ USA below the

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<sup>2</sup> See FCC file number ITC-T/C-19980402-00223.

statutory threshold for affiliation with the Verizon BOCs. TNZ USA is therefore no longer subject to the Section 271 restriction against providing originating interLATA services in states within Verizon's region.

For that reason, TNZ USA now requests Section 214 authority to provide facilities-based and resold international services between all international points (except those on the Commission's exclusion list) and all domestic U.S. points. As part of that, TNZ USA also requests authority to provide services through ISR on all routes for which the Commission has authorized such service and pursuant to the Commission's rules.<sup>3</sup> These services will provide additional competitive options for customers, expanding and enhancing competition and service availability throughout the United States. Such increased competition will contribute to lower prices, improved services, and enhanced innovation in service offerings for the U.S. international services market. These potential benefits should lead the Commission to determine that granting this application is in the public interest.

### **III. REGULATORY TREATMENT**

TNZ USA continues to be a wholly owned subsidiary of TCNZ, which provides telecommunications services within New Zealand. Pursuant to its existing Section 214 authorizations, TNZ USA is regulated as a dominant carrier on the U.S.-New Zealand and U.S.-Cook Islands routes, and it is in full compliance with the Commission's Section 63.10 rules governing dominant carriers. TNZ USA is regulated as a non-dominant carrier on all other routes where it provides service.

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<sup>3</sup> See 47 C.F.R. §§ 63.16, 63.22(e) and 63.23(d).

TNZ USA hereby agrees to continue being regulated as a dominant carrier on the U.S.-New Zealand route and the U.S.-Cook Islands route. On all other international routes, however, TNZ USA asks the Commission to continue regulating it as a non-dominant carrier. TNZ USA is not affiliated with any carriers that possess market power on those routes.

#### **IV. INFORMATION REQUIRED UNDER SECTION 63.18**

The following information is provided pursuant to Section 63.18 of the Commission's rules, which details what contents must be included in applications by international common carriers.

- (a) The applicant's name is Telecom New Zealand USA Limited ("TNZ USA"), and it is located at 251 South Lake Avenue, Suite 540, Pasadena, California, 91101. The telephone number is (626) 432-4300;
- (b) The company's headquarters is at the above address in California; it is organized and operates under the laws of the State of Delaware;
- (c) Contact names and numbers are as follows:
  - (1) Ian Neale, President, 251 South Lake Avenue, Suite 540, Pasadena, CA 91101, (626) 432-4300;
  - (2) Albert Halprin, counsel to TNZ USA, 555 12<sup>th</sup> Street, N.W., Suite 950-North, Washington, DC 20004, (202) 371-9100;
- (d) As noted above, TNZ USA currently operates under three Section 214 authorizations, as follows:

- (1) Facilities-based services between the U.S. and New Zealand (ITC-96-097);
  - (2) Limited global, facilities-based and resale services between the U.S. and all points except New Zealand (ITC-97-186);
  - (3) Resale of international private lines interconnected to the public switched network (ISR) between the U.S. and New Zealand (ITC-97-049); and
  - (4) Authorization for authority to operate as a facilities based carrier and to resell services between permissible international points and the former Ameritech states and New York (File No. ITC-214-20001117-00675).
- (e) TNZ USA hereby requests the following authority:
- (1) Global facilities-based authority, pursuant to Section 63.18(e)(1) of the Commission's rules. TNZ USA requests authority to operate and provide services to all countries and destinations not on the Commission's exclusion list, with the exception of New Zealand and the Cook Islands, for which TNZ USA is requesting authority pursuant to Section 63.18(e)(4). TNZ USA hereby certifies that it will comply with the terms and conditions stated in Sections 63.21 and 63.22 of the rules.
  - (2) Global resale authority, pursuant to Section 63.18(e)(2) of the Commission's rules. TNZ USA requests authority to operate and provide services to all countries and destinations not on the Commission's exclusion list, with the exception of New Zealand and the Cook Islands, for which TNZ USA is requesting authority pursuant to Section 63.18(e)(4). TNZ USA hereby certifies that it will comply with the terms and conditions contained in Sections 63.21 and 63.23 of the rules.

(3) Other Authorizations. Pursuant to Section 63.18(e)(4) of the Commission's rules,

TNZ USA requests authority to operate as a facilities-based carrier and to resell services between all domestic points and New Zealand and the Cook Islands.

TNZ USA agrees to be regulated as a dominant carrier on those routes due to its affiliation with foreign carriers which the FCC has not determined to lack market power in those markets. TNZ USA agrees to comply with terms and conditions contained in Sections 63.21, 63.22 and 63.23 of the Commission's rules.

(f) Not applicable.

(g) The requested authorization is categorically excluded pursuant to Section 1.1306 of the Commission's rules; therefore, no environmental assessment as described in Section 1.1311 must be filed with this application.

(h) TNZ USA is wholly (100%) owned by Telecom Corporation of New Zealand Ltd. (TCNZ), which is a New Zealand-based holding company whose principal business is the provision of telecommunications services in New Zealand. TCNZ is located at Level 8, 68 Jervois Quay, Wellington, New Zealand. (See Appendix A for a complete list of TNZ USA's affiliates). TNZ USA does not have any interlocking directorates with a foreign carrier.

(i) TNZ USA hereby certifies that it is affiliated with the following carriers in the following countries:

(1) Telecom Corporation of New Zealand Limited and Telecom New Zealand Limited (New Zealand);

(2) Telecom Cook Islands Limited (the Cook Islands, a New Zealand dependency);

- (3) Telecom New Zealand International Australia Pty. Limited and AAP Telecommunications Pty. Limited (Australia);
  - (4) Telecom New Zealand Japan Kabushiki Kaisha (Japan);
  - (5) Telecom New Zealand UK Limited (United Kingdom);
  - (6) Telecom Samoa Cellular Limited (Samoa).
- (j) TNZ USA certifies that it is not a foreign carrier in any country and does not control a foreign carrier in any country. Pursuant to Section 63.18(j)(3), TNZ USA certifies that it seeks to provide services to the following six destination countries, in which a carrier is more than 25% owned or controlled by an entity (TCNZ) that controls TNZ USA: New Zealand, the Cook Islands (a New Zealand dependency), Australia, Japan, the United Kingdom, and Samoa.
- (k) TNZ USA hereby makes the following showings with regard to each country listed under paragraph (j) above:
- (1) New Zealand is a member of the World Trade Organization;
  - (2) The Cook Islands participate in the World Trade Organization through New Zealand;
  - (3) Australia is a member of the World Trade Organization;
  - (4) Japan is a member of the World Trade Organization;
  - (5) The United Kingdom is a member of the World Trade Organization;
  - (6) In Samoa, TNZ USA is affiliated with a carrier that lacks market power in that market. TNZ USA is affiliated with Telecom Samoa Cellular Ltd., a joint venture between the Government of the Independent State of Samoa (10%) and a holding company, Telecom Pacific Investments Limited (90%), which is wholly



owned by TCNZ and is based in New Zealand. Telecom Samoa Cellular Limited does not provide wireline services in Samoa, and thus it does not have market power in the markets for terminating or originating international calls, including international transport facilities or services, cable landing station access and backhaul, inter-city facilities or services, or local access facilities or services.

- (l) With regard to New Zealand and the Cook Islands, TNZ USA certifies that it will file quarterly traffic reports pursuant to Section 43.61(c) of the Commission's rules.

With regard to Australia, Japan, the United Kingdom, and Samoa, TNZ USA certifies, pursuant to Section 63.10(a)(3) of the Commission's rules, that its affiliates lack 50 percent market share and thus do not have market power in relevant markets in those countries (see Appendix B for a complete showing). In brief, neither of TNZ USA's affiliates in **Australia** has market power in that country. Telecom New Zealand Australia operates only as a service provider and is not regulated as a carrier; it does not operate a switch and resells service from other carriers. AAP Telecommunications Ltd., of which TCNZ owns 100 percent, is the third-largest long distance and international carrier in Australia but has less than a 15 percent market share. The affiliate in the **United Kingdom**, Telecom New Zealand UK, has a public telecommunications operator's license but provides only wholesale international facilities-based services. Established in 1999, it operates one switch. In **Japan**, TNZ USA's affiliate is licensed as a Special Type II carrier and provides only wholesale facilities-based international services. It was established in December 1999 and does not have a switch in Japan. As stated above, TNZ USA's affiliate in

**Samoa** provides only mobile services and thus does not have market power in any relevant market, including the access market in Samoa.

- (m) TNZ USA acknowledges that its affiliates have market power in New Zealand and the Cook Islands and agrees to be regulated as a dominant international carrier on the routes to those destinations. As stated above, with regard to Section 63.10 of the Commission's rules, TNZ USA hereby requests to be regulated as non-dominant on the routes to Australia, the United Kingdom, Australia, and Samoa, where its affiliates lack market power. As stated in detail in the appendix to this application, none of those affiliates has more than a 15 percent market share in any service market in the countries where they operate; thus they are entitled to a presumption that they lack market power, and TNZ USA, therefore, should be regulated as non-dominant on those routes. Moreover, none of the affiliates is named on the FCC's listing of carriers presumed, for purposes of lifting the International Settlements Policy, to have market power.
- (n) TNZ USA hereby certifies that it has not accepted any special concessions, directly or indirectly, from foreign carriers on any U.S. international route on which TNZ USA is affiliated with a carrier that has market power, nor will it accept any special concessions in the future.
- (o) Pursuant to Sections 1.2001 through 1.2003 of the Commission's rules, TNZ USA certifies that no party to this application is subject to a denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988.
- (p) TNZ USA hereby requests streamlined processing of this application, pursuant to Section 63.12 of the Commission's rules. Under Section 63.12(c)(1), a carrier is

required to make a showing that it qualifies for streamlined treatment if it is affiliated with a foreign carrier in a destination market. With regard to TNZ USA's affiliates in Australia, Japan, the United Kingdom, and Samoa, TNZ USA has provided in Appendix B to this application a showing, under Section 63.10(a)(3), that those affiliates lack market power in the destination markets, and therefore TNZ USA qualifies for a presumption of non-dominance, pursuant to Section 63.12(c)(1)(ii). Moreover, with regard to Samoa, TNZ USA's affiliate owns only mobile wireless facilities in the destination market, and thus TNZ USA qualifies for streamlined treatment under Section 63.12(c)(1)(iii). With regard to New Zealand and the Cook Islands, TNZ USA certifies that New Zealand is a WTO member country and that the Cook Islands is represented by New Zealand at the WTO, as well. Further, TNZ USA agrees to be classified as a dominant carrier to New Zealand and the Cook Islands, without prejudice to its right to petition for reclassification at a later date. Thus, TNZ USA qualifies for streamlined treatment under Section 63.12(c)(1)(v) of the Commission's rules.

## **V. CONCLUSION**

TNZ USA already is operating in the U.S. market, contributing to a vigorous and healthy market for international services, particularly on routes along the Pacific Rim. Indeed, it is the heir to an historic legacy of early efforts by regulators to promote competition both within the United States and in New Zealand, the home market of its parent company, TCNZ. Both the United States and New Zealand have embraced the World Trade Organization's basic telecommunications services agreement, which

affirmed and amplified the pro-competitive market-opening moves already taking place within both countries. Both countries have made continual efforts to adjust their regulatory regimes to maximize the potential for the growth of competition, and both countries have sought to participate internationally in sharing information and expertise in a mutual effort to liberalize the global telecommunications market. TNZ USA has both contributed to—and benefited from—that market liberalization in the years since this Commission first granted Section 214 authority in late 1996.

TNZ USA now is seeking the ability to expand its investment and operations in the United States, bringing competition to customers in states where it previously was prohibited from offering a full range of interLATA offerings under Section 271. Indeed, because of Verizon’s divestment of shares, bringing its stake in TNZ USA’s parent company below 10 percent, TNZ USA no longer is affiliated with Verizon and thus should not be subject to restrictions stemming from the interLATA prohibitions of the Act.<sup>4</sup> Granting this application would affirm these pro-competitive developments and underline the ability of companies to establish themselves successfully in the U.S. market pursuant to the guidelines set forth in the Act and the Commission’s rules.

As noted above, New Zealand has embraced and adhered to the WTO’s basic telecommunications services agreement, and to the accompanying Reference Paper on regulatory principles. It would send a negative signal to New Zealand—and to other countries that have helped pioneer pro-competitive policies—if the Commission were to

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<sup>4</sup> It should also be noted that while TNZ USA’s 214 authorizations continue to prohibit originating interLATA services in all Verizon region states except New York, the Verizon BOCs themselves have won authority to offer such services in all but a few in-region states (e.g. Maryland, West Virginia, the District of Columbia).

deny or delay TNZ USA's request to provide services when the interLATA restrictions of Section 271 no longer apply to it.

TNZ USA acknowledges its status as a subsidiary of Telecom Corp. of New Zealand, which continues to have market power in New Zealand. Thus, TNZ USA agrees to continue being classified as dominant on that route (and the Cook Islands route), without prejudice to its ability to seek non-dominant status in the future. However, TNZ USA seeks authority to continue operating as a non-dominant carrier on all other routes. Therefore, for the reasons stated above, TNZ USA hereby requests that the Commission grant its application for global, facilities-based and resale authority under Section 214 of the Communications Act.

Respectfully submitted,

TELECOM NEW ZEALAND USA, LTD.

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